

### **REMARKS AND DISCUSSION**

Upon entry of the present Amendment C, claims 1-26 are pending in the application, of which claims 1 and 14 are independent.

Claims 14 and 15 are amended herein. The applicant respectfully submits that all of the above amendments are fully supported by the original specification, including the drawings and claims. The applicant also respectfully submits that no new matter is introduced by the above amendments.

The above-identified Office Action has been reviewed, the references carefully considered, and the Examiner's comments carefully weighed. In view thereof, the present Amendment C is submitted. It is contended that by the present amendment, all bases of rejection set forth in the Office Action have been traversed and overcome. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

### **DRAWING ISSUES**

Applicant notes for the record that the Examiner has not indicated whether or not the originally-filed drawings have been approved. Applicant respectfully requests formal confirmation from the Examiner that the drawings are approved for publication.

### **CLAIM AMENDMENTS**

Applicant has amended each of claims 14 and 15 to further define the claimed invention by more clearly stating that the system is to be mounted on two moving vehicles. This limitation further defines the claimed invention over the references of Ross III and Lempio et al. as cited by the Examiner.

**Claim Rejections – 35 USC 103**

At item 3 of the Office Action, the Examiner rejected claims 1-26 under 35 USC 103(a), as unpatentable over Ross III (US 2003/0092384) in view of Lempio et al. (US 6,831,896). Applicant traverses this ground of rejection, and requests reconsideration thereof as discussed below.

**Applicant's Response**

The Examiner, in the rejection of claim 1, has taken the position that, in his view, Ross III discloses a wireless network system for use with two vehicles. Applicant respectfully suggests that this is not a correct interpretation of Ross III. It is unclear what the Examiner has based this assertion on.

Ross III discloses a wireless radiotelephone communication system that can be applied within a single vehicle and which can be adapted for use on different types of vehicles (para.[0017], [0020], abstract, claims 6-8). The system of Ross III includes a first wireless network interface on a vehicle for relaying user pointing commands to a radiotelephone, and a second wireless network interface, where the second network interface is located on the same vehicle, for receiving radiotelephone displays from the radiotelephone (Ross, Para. [0019], abstract, claim 1).

However, contrary to the Examiner's assertion, Ross III fails to disclose a system for simultaneous use on more than one vehicle. Applicant respectfully submits that in fact Ross III specifically discloses a system limited to application in one vehicle with the statement "an interface for a vehicle" as recited in claim 1. This is distinct from the claimed invention that specifically discloses a wireless network for two vehicles ([0015] and Claim 1). Further, applicant suggests that not only does Ross III not disclose application of the system to more than

one vehicle, Ross III actually teaches away from applying the technology to a system for two vehicles. Based on the reasoning put forth above, Applicant submits that claim 1 is in condition for allowance, accordingly, claims 2-13, which are dependent upon claim 1, should be found allowable.

In the rejection of claim 2, the Examiner claims that Lempio et al. discloses a relay (beacon) configured to be mounted to a second of two vehicles (col. 1, lines 55-67). Applicant respectfully suggests that, contrary to the Examiner's assertion, this feature is not disclosed by Lempio. Applicant respectfully submits that Lempio discloses a network of fixed beacons (relays), rather than relays mounted to moving vehicles. Applicant's interpretation is supported by the disclosure of Lempio (col. 5, line 64 – col. 6, line 1 and col. 6, lines 36-44). Additionally, Lempio discloses plural wireless transceiver beacons 14 connected directly or indirectly with a host 12, the host 12 being responsible for routing data to the beacons 14 and interfacing the network (host 12 and beacons 14) to an external network such as the internet. The host 12 is exemplified by a personal computer. Lempio discloses land-based, static beacons, as reflected in the preferred embodiment of the beacon shown in Figs. 3A and 3B, in which the beacons include a two-prong connector electrical interface for obtaining power from a standard electrical outlet (col. 4, lines 51-55). Lempio further describes the beacons 14 being used as a position reference for mobile devices (i.e., telephones, PDAs) (col. 5, lines 64-66), and describes that when the mobile devices change locations during normal use, the mobile device may access the network via different beacons, depending on the position of the device as it moves through the network coverage area (col. 6, lines 36-44). Thus, Lempio discloses a network in which the relays (beacons) are fixed in space, and does not suggest a network which is mounted on two vehicles so as to move through space. This is distinct from the claimed invention where the beacons

(Bluetooth® devices) are mounted to moving vehicles and are communicating with other mobile devices that are also moving (Claim 1). Applicant submits that Lempio et al. actually teaches away from a wireless system capable of mounting to two moving vehicles by listing the preferred embodiment as one where the beacons are located at a fixed position (col. 5, lines 21-49).

Teaching Away Provides Evidence of Non-Obviousness

The Court of Appeals for the Federal Circuit has established that a prima facie case of obviousness can be rebutted if the applicant . . . can show 'that the art in any material respect taught away' from the claimed invention." *In re Geisler*, 116 F.3d 1465, 1469, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997). "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, . . . would be led in a direction divergent from the path that was taken by the applicant." *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360, 52 USPQ2d 1294, 1298 (Fed. Cir. 1999), *In re Haruna*, 249 F.3d 1327; 58 U.S.P.Q.2D 1517 (Fed. Cir. 2001). The court has also stated that it is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

While it is applicant's position that the Examiner has not established prima facie obviousness of any of the present claims under 35 USC §103(a), applicant also respectfully submits that the clear preference for a stationary beacon as evidenced by Lempio et al. and a clear preference for a system mounted to a single vehicle as disclosed by Ross III *teaches away from* Applicant's claimed invention, which is a wireless communication system mounted on two moving vehicles. Since Lempio et al. and Ross III teach away from applicant's claimed invention, instead of rendering applicant's claims obvious, the two references actually *provide evidence of non-*

*obviousness of applicant's invention.*

Further, in the rejection of claim 2, the Examiner has also taken the position that, in his view, the combination of the disclosure of Lempio where a first and second piconet structure a network (Fig. 7) combined with the disclosure of Ross III makes the claimed invention obvious. Applicant respectfully submits that this combination of references is not obvious. Lempio et al., as discussed above is clearly structured for a network of fixed beacons while the claimed invention is applied to two moving vehicles (claim 1). Applicant would like to direct the Examiner to the discussion of the standard for determining obviousness of a new invention included below. Applicant submits, that based on the reasoning put forth above, that claim 2 is in condition for allowance.

The Examiner has rejected claims 4-8 and 17-21 based on his interpretation that Lempio teaches a means for restricting transmission electricity of a communication module (col. 1, lines 25-28) to Bluetooth® class 2 or 3 and a method of restricting transmission electricity to Bluetooth® class 1 (col. 3, lines 60-65). Again, Applicant submits that the Examiner is applying an overly broad interpretation of the Lempio reference. Lempio discusses the possible configurations and limitations of Bluetooth® technology (col. 3, line 60-65), but does not specifically disclose a method whereby Bluetooth® devices communicate with each other at a transmission class (i.e. class 3) that is determined or restricted by the system. It should be noted that the disclosures of Lempio were put forth prior to the widespread adoption of the Bluetooth® specification (col. 1, lines 24-35). The present invention claims that the transmission electricity is defined for certain embodiments (claims 4-8 and 17-21). This is a significant limitation with respect to Lempio which only discloses the possibility of restricting transmission electricity by cites the limitations of Bluetooth®. The Examiner has broadly interpreted the description of

Bluetooth® in Lempio as teaching a method of having multiple Bluetooth® devices that are restricted to communicating at lower transmission levels, such as class 2 or 3. Applicant submits that this is an improper interpretation of Lempio, under a correct reading, Lempio does not disclose a method of restricting the transmission electricity for individual Bluetooth® components (claims 4-8 and 17-21).

Regardless of the Examiner's interpretation of the Ross III and Lempio et al. references, Applicant respectfully submits that the Examiner has used impermissible hindsight in combining the two references to arrive at the claimed invention. Applicant also respectfully submits that even if the Examiner's assertion that it would be obvious to combine the two references is accepted, any hypothetical combination resulting from the actual teachings of these references would still fail to achieve or make obvious the invention of the independent claims because they still do not teach each and every aspect thereof, for example, the claimed application of the wireless system to two moving vehicles.

#### The Standard for Obviousness under Relevant Law

Applicant respectfully wishes to call the Examiner's attention to some relevant cases of the U.S. Court of Appeals for the Federal Circuit (CAFC). The CAFC was established in 1982 to bring national standards, and a certain level of conformity and continuity to Federal patent case law. Decisions of the Federal Circuit are relevant and helpful in giving guidance to patent practitioners, as well as to the personnel of the U.S. Patent and Trademark Office. The CAFC has stated that:

In order to determine obviousness as a legal matter, four factual inquiries must be made concerning: 1) the scope and content of the prior art; 2) the level of ordinary skill in the art; 3) the differences between the claimed invention and the prior art; and 4) secondary considerations of nonobviousness, which in case law is often said to include commercial success, long-felt but unresolved need, failure of others, copying, and unexpected results. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966); *Miles Labs., Inc. v. Shandon, Inc.*, 997 F.2d 870, 877, 27 USPQ2d 1123, 1128 (Fed. Cir. 1993).

In addition, the U.S. Supreme Court has recently said that “[A] patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art. . . . Inventions usually rely upon building blocks long since uncovered, and claimed discoveries almost necessarily will be combinations of what, in some sense, is already known. *KSR v. Teleflex*, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (S.Ct.2007)

Applicant respectfully suggests that the Examiner must provide a reason why he or she feels that it would be obvious to combine the elements of the cited references in the fashion claimed by applicant. “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR v. Teleflex*, *supra*.)

The U.S. Supreme Court has also stated that a factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See *Graham*, 383 U. S., at 36 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight”). *KSR v. Teleflex*, *supra*.

Applicant submits that the above-quoted case law has relevance to prosecution of the present application, and applicant respectfully requests that the Examiner's rejection of claims 1-26 under 35 USC 103(a) be reconsidered and withdrawn. Specifically, the combination of the disclosures of Lempio et al. and Ross III do not make the claimed invention obvious. Additionally, the combined references do not disclose each and every aspect of the claimed invention. Neither Lempio et al. of Ross III disclose a wireless communication network mounted on two moving vehicles.

**Conclusion**

Based on all of the foregoing, applicant respectfully submits that all of the rejections set forth in the Office Action are overcome, and that of the pending claims are believed to be allowable over all of the references of record, whether considered singly or in combination. Applicant requests reconsideration and withdrawal of the rejections of record, and allowance of the pending claims.

The application is now believed to be in condition for allowance, and a notice to this effect is earnestly solicited.

If the Examiner is not fully convinced of the allowability all of the claims now in the application, applicant respectfully requests that the Examiner telephonically contact applicant's undersigned representative to expeditiously resolve prosecution of the application.

Favorable consideration is respectfully requested.

Respectfully submitted,



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